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Commissioner of Patents and
Trademarks
Washington DC 20231

PLEASE NOTE the above new address of Peter A Miller previously 71229 Leonberg, Germany for all future correspondence from USPTO.

PETITION TO THE COMMISSIONER

Appl.No: 09/242072
Filing date: 14.1.2000
IPC Appl. PCT/AU96/00442
Examiner: Cintins

Pursuant to 37 CFR §1.181 to REVIVE and GRANT the rejected Petition to the Commissioner of the Applicant dated 5 September 2002 (on Page 3 thereof) namely:

"To treat Applicant's Response III, filed 16 August 2002 as timely (Request for Continued Examination) and as basis for determining a Declaration of Allowance"

and annul the declared condition of Abandonment of Application No.: 09/242072
"APPARATUS FOR LIQUID PURIFICATION".

GROUND

The grounds given for the Dismissal of the PETITION and the Notice of Abandonment are flawed and untenable..

Background (OA=Office Action / App.=Applicant's Action):

1999

(App.1) 1999 January 29: IPC application transmittal letter with Declaration mailed to USPTO - "Apparatus for liquid purification".

2000

(OA1)	2000 January 14:	USPTO filing date.
(OA2)	2000 Sept. 20	Application forwarded to National Stage Processing Branch of PTO by PCT Legal Office
(App.2)	2000 October 9:	Applicant mailed amended IPC claims (marked up and clean) to comply with USPTO regulations.
(OA3)	2000 October 25:	PTO mailed Filing Receipt (Acknowledgement of receipt of nonprovisional Patent Application (09/242.072)).

2001

(OA4) 2001 March 3: ***PTO mailed Office examination action / 1st Final Rejection***

(App.3) 2001 April 2: Applicant mails response to **1st Final Rejection**

(OA5) 2001 Sept. 3: Statutory 6 months from date of mailing of Final Rejection allowed to lapse by the PTO Examiner.

Application now in state of ALLOWANCE.?

(OA6) 2001 October 2: Notice of Non-Compliant Amendment (37 CFR 1.121) mailed by Legal Instruments Examiner (Marked-up Amendments of Description and Claims I in Applicants response 2001, April 2 not supplied in “clean” version as well)

(App.4) 2001 October 20 “Clean” versions timely mailed to PTO.

2002

(OA7)	2002 March 10	<i>PTO mailed Office examination action / <u>2nd Final Rejection</u></i>
(App.5)	2002 May 31	Applicant mailed response to <u>2nd Final Rejection</u> ,
(OA8)	2002, June 23	Office Action to Applicant's response 2000 May 31
(App.6)	2002 August 6	Applicant's response to Office Action 2002, June 23
(OA9)	2002 August 23	PTO communication
(App.7)	2002 Sept. 5	Petition by Applicant to Commissioner
(OA10)	2002 Dec. 12	Office action concerning Applicant's response 2002 August 6

2003

- (OA11) 2003 January 6 PTO communication (Technology Center 1700)
PETITION DISMISSED / NOTICE OF
ABANDONMENT
- (OA12) 2003 January 13 Office communication / NOTICE OF
ABANDONMENT
- (App.8) 2003 March 11 Applicant's response to OA10 (12 December 2002)

Applicant's Petition, App.7 (5 September 2002):

"to treat applicants Response III, filed 16 August 2002 as timely and as basis for determining a Declaration of Allowance"

OA11 (6 January 2003, Jacqueline Stone, Technology Center 1700):

Decision on the Petition of the Applicant under 37 CFR 1.181 filed by USPTO on 2002 September 5 (see ANNEX):

"The PETITION is dismissed"

Grounds for Rejection

"Applicant further comments in his petition that the final rejection mailed March 13, 2002 cannot be justified."

"The final rejection dated March 13, 2002 is not premature and is justified because the only new grounds of objection and rejection contained in the office action were necessitated by Applicant's amendment filed November 20, 2001. This amendment introduced new matter into both the specification and claims. Applicant's amendment necessitated the new ground(s) of rejection presented in the office action."

The grounds for the Decision to *dismiss the Petition* and declare the *Application as Abandonment* are seriously flawed.

Reasons:

- 1) The Applicant in his PETITION did **not** comment that the **2nd Final Rejection, OA7** (mailed 10 March 2002) cannot be justified. The following "Interim Comment" was made:

"At this stage according to normal office practice, prosecution as to the merits of the claims should have been formally closed and the condition of allowance except for formal matters declared".

The reason for this is that all Objections to the Claims in **OA7** (2nd Final Rejection, 10 March 2002) pertained to matters of FORM only with no objections concerning MERIT. All objections to matters of MERIT in the Application were contained in **OA4** (1st Final Rejection, 3 March 2001) and were **ALL** successfully overturned by the Applicant in **App.3** (Applicant's Response, 2 April 2001).

It appears that the intention of the Examiner is to ignore the existence of **OA4** (an official OA to **App.3** was never made and the statutory time period of 6 months from final action was allowed to lapse by the Examiner) thus pointing to the possibility of a flawed prosecution of the entire Examination Procedure.

2) The Applicant **did not forward** an AMENDMENT filed 2001 November 20. Referred to here are the "CLEAN" versions of Applicant's marked-up amended claims and description in his response **App.3** (2 April 2001) to **OA4** (1st Final Rejection, 3 March 2001) of the examiner (Cintins). These clean versions were requested by the *Legal Instruments Examiner* in his communication **OA6** ("NOTICE OF NON-COMPLIANT AMENDMENT, 37 CFR 1.121, dated 2 October 2002).

The Examiner (Cintins) allowed the statutory time period from the date of this 1st Final Rejection to **LAPSE**. That is, his *non-response* within the statutory maximum period of 6 months from date of final rejection indicates a tacit *condition of allowance* of the Specification according to the amended version provided in the Applicant's **App.3**

This conclusion was verified in further **OAs** (Office Actions) since the statutory lapse date 2001 September 3, wherein the objections concerning **merit** in the 1st Final Rejection have been wholly withdrawn in the light of **App.3**

The "NEW MATTER" objected to by the Examiner in **OA7** (2nd Final Rejection) referred to in **OA11** (Decision on Petition, J Stone, Technology Center 1700, 3 January 2003) deals exclusively with the introduction of alternative words and phrasing by the Applicant *only* to the *Description* and *only* to obtain clarity after the removal of words and phrases objected to by the Examiner (Cintins) in **OA4** (1st Final Rejection, 3 March 2001) clearly concerning *matters of form only*.

On the Page 1 (Form PTO-326) of **OA7** (2nd Final Rejection, 10 March 2002) *only* matters of form in the CLAIMS are objected to.

No new matter was introduced to the CLAIMS and matter introduced to the DESCRIPTION concerned terms/phraseology/semantics constituting matters of form only and not touching the innovative, inventive content of the CLAIMS.

The following is a list of new replacement terms and corrections introduced to the Description

Page 1:

- "*involves an in-depth*" replaced "*normally involves an in-depth activated carbon in powder form*" replaced "*activated carbon, etc., all normally in powder form*"
- "*nutsche-type filter with open or closed containers*" replaced "*nutsche-type filter in the form of open or closed containers*"
- "*and*" replaced "*added to this*"
- "*thus precluding*" replaced "*precluded*"
- "*required for removing relatively small concentrations of specific organic and inorganic contaminants in solution and in a colloidal state*" replaced "*and the necessity for utilizing relatively coarse granular material comprising the beds for removing organic and inorganic contaminants in solution precludes on economic grounds*"
- Added: "*Prior art sand filtration inherently lacks the flexibility and versatility to handle today's demanding liquid purification requirements in the liquid processing industries*"

Page 2:

- "*for reuse*" replaced "*and reused*"

- "liquid and solid waste generation" replaced "liquid and solid waste for disposal."
- "Yet a" instead of "A"
- "As for" instead of "The aim of the invention with"
- "total media regeneration to avoid altogether the necessity for waste dumping into the environment" instead of "continuous regeneration to avoid the necessity for dumping into the environment."

The above matter concerns exclusively a description of *prior art technology* and as such cannot *per se* comprise NEW MATTER leading to abandonment of any application.

Page 2 (cont.)

- i) "The... Fig. 1" instead of "Fig. 1 is a"
- ii) "shows" instead of "that consists of"

Page 3

- iii) "device" instead of vessel"
- iv) "organic substances" instead of "organics"
- v) "by means of ultra-sonic devices, turbulence producing devices, diffusion enhancing process, etc." instead of "(ultra-sonic, turbulence, diffusion, etc.)"
- vi) "as well as process variables" instead of "as well as variables"
- vii) "suction/ pressure pump" instead of "suction/vacuum pump" (error correction)
- viii) "of the media" instead of "of media"
- ix) "normally hydraulic" instead of "normally taking the form of hydraulic"
- x) "container closure and sealing" instead of "container closure"

Page 4

- xi) "guide" instead of "guides"
- xii) "»sections" instead of "section"
- xiii) "is" instead of "are normally"
- xiv) "belt or belts" instead of "belts"
- xv) "the section of filter medium is transported" instead of "the material is transported"
- xvi) "the dependent rims 3 as peripheral, integral sides" instead of "the dependent rims 3 when they take the form of peripheral, integral sides"
- xvii) "in the cylinders 215/304" instead of "in cylinders 215"
- xviii) "301" instead of "302" (error correction)
- xix) "extending to and fixed at the ends of" instead of "extending and fixed at the top end to"
- xx) "which" instead of "that"
- xxi) "302" instead of "301" (error correction)
- xxii) "301" instead of "302" (error correction)
- xxiii) "part of the apparatus of the invention for controlling the" instead of "apparatus of the invention for"
- xxiv) "data" instead of "information"

Page 5:

- xxv) "control the filtration operation and provide the data input to the microprocessor for computing the filtration characteristics of the suspension by determining the instantaneous volumetric flow of gas" instead of "control and indirectly establish the filtration characteristics of the suspension by measuring the volumetric flow of gas"
- xxvi) "Simultaneously, filtrate flows" instead of "Simultaneously, a sample of filtrate flows"
- xxvii) "polyester mono-filament" instead of "polyester-monofil"
- xxviii) "dependent" instead of "depending"

Page 6:

- xxix) „Gas continues to flow through the filter cake“ instead of Cake drying
(correction)
- xxx) “Belt transport” instead of “Cake discharge”
- xxxi) “Prior art” instead of “-of the prior art”
- xxxii) “which” instead of “that”
- xxxiii) “intervals” instead of “intevals” (correction)
- xxxiv) “consists” instead of “takes the form”
- xxxv) “accommodate” instead of “achieved”
- xxxvi) “considerably” instead of “considerable” (correction)

The above matter concerns exclusively descriptions of *prior art technology*, legitimate corrections, alternative expressions to achieve more clarity and technological matters backed up by the original IPC version of the application and as such cannot *per se* comprise NEW MATTER leading to the abandonment of any application.

CONCLUSION:

The above exposition clearly shows that the basis of **OA11 (DECISION ON PETITION; 6 January 2003, Jacqueline Stone, Technology Center 1700)** is seriously flawed thus rendering the Decision of Dismissal of Petition and Abandonment null and void.

PETITION: To REVIVE and GRANT the rejected Petition to the Commissioner **App.7**

(5 September 2002 on Page 3 thereof) namely:

“To treat Applicant’s Response III, filed 16 August 2002 as timely (Request for Continued Examination) and as basis for determining a Declaration of Allowance”
and to vacate the condition of Abandonment.

The Applicant and Inventor hereby grants powers of attorney to the PTO to debit possible Petition Fees to his Deposit Account with the PTO: Account No: 501200

Peter Miller, Inventor and Applicant



ANNEX

ANNEX

QA11

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UNITED STATES
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Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
www.USPTO.gov

Mailed: JAN - 6 2003

WAK
Paper Number 33

In re Application of
Peter Miller
Serial No.: 09/242, 072
Filed: January 14, 2000
For: APPARATUS FOR LIQUID PURIFICATION

DECISION ON
PETITION

This is a Decision on the Petition filed under 37 C.F.R. 1.181 on September 5, 2002. The Petition request that Applicant's "Response III", filed August 16, 2002 be treated as being filed timely and as basis for determining a declaration of allowance. Applicant further comments in his petition that the final rejection mailed March 13, 2002 cannot be justified.

The Examiner has considered Applicant's response filed August 16, 2002 and an advisory action was mailed December 12, 2002. The final rejection dated March 13, 2002 is not premature and is justified because the only new grounds of objection and rejection contained in the office action were necessitated by Applicant's amendment filed November 20, 2001. This amendment introduced new matter into both the specification and claims. Applicant's amendment necessitated the new grounds(s) of rejection presented in the office action.

The PETITION is dismissed.

The period for reply expires 6 months from the mailing date of the final rejection. The final rejection was mailed on March 13, 2002. The application is abandoned because the maximum extendable period for reply has expired.

Jacqueline Stone, Director
Technology Center 1700
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